

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

**BRIEF AND APPENDIX FOR APPELLANT
HENRY FRANK**

IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA

No. 7850

October Term, 1941

HENRY FRANK, *Appellant*

v.

TENNYSON MALONE also known as TENNYSON W.
MALONE, *Appellee*

**Appeal Allowed From Order of the Municipal Court of the
District of Columbia, Dismissing Attachments
Before Judgment.**

WOODSON P. HOUGHTON

KAHL K. SPRIGGS

Southern Building

Washington, D. C.

Attorneys for Appellant

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BRIEF FOR APPELLANT

Jurisdictional Statement.

This was a debt action on a foreign judgment by appellant in the municipal court of the District of Columbia against appellee to recover the sum of \$490.10 (Title 18, Sec. 193, D. C. Code of 1929), in which attachments before judgments and garnishments were issued on the ground of non-residence of appellee (Title 24, Sec. 121, D. C. Code of 1929). The municipal court on motions of appellee dismissed the writs of attachment and garnishments, presumably upon ground of supposed lack of jurisdiction, petition for allowance of appeal was duly filed by appellant and was allowed by this Court on July 10, 1941. Title 18, Sec. 29, D. C. Code of 1929, authorizes review by this Court of such judgments of the municipal court.

Statement of Case.

Henry Frank, appellant, brought an action in the municipal court of the District of Columbia on October 24, 1940, against appellee, Tennyson Malone, also known as Tennyson W. Malone, a non-resident of the District of Columbia (Appellant's App. 1), to recover on a judgment which Frank had obtained against Malone in the Court of Common Pleas, Franklin County (Columbus) Ohio, in the principal amount of \$490.10, with interest (Appellant's App. 2).

At the time of the institution of the action in the municipal court, Frank filed appropriate bond (Appellant's App. 3) and caused to be issued attachments before judgment against the property here of Malone, upon the ground that he was a non-resident, and served as garnishees the following persons: (1) Tennyson W. Malone, executor of the estate of Thomas W. Malone, deceased (Appellant's App. 4-8); and (2) Warren E. Miller, attorney for Tennyson W. Malone, executor of the estate of Thomas W. Malone, deceased (Appellant's App. 4-8). The Malone estate was being administered in the District of Columbia and the executor was served as a non-resident executor through our Register of Wills, pursuant to the provisions of law, Title 29, Sec. 88, D. C. Code of 1929.

Later, additional attachment before judgment and garnishment were served upon Security Savings & Commercial Bank, of Washington, D. C. (R. 13, 14).

Appellee, Malone, individually, and not the garnishees involved, filed two motions to quash the attachments before judgment (Appellant's App. 8, R. 17) on the principal

ground that the municipal court was without jurisdiction over such attachments and garnishments, contending that they should have been issued from the district court instead. The second motion to quash was addressed to the attachment and garnishment against the above bank and as it contained the same grounds as the earlier motion, the motions were treated together by the municipal court. They will be so considered in this brief. The first motion only is printed in appellant's appendix.

The court took the motions under advisement and briefs were filed by counsel. On March 4, 1941, the municipal court sustained both motions to quash the attachments before judgment (Appellant's App. 10-11). The petition of Henry Frank for allowance of writ of appeal was filed in this Court on March 13, 1941, and was allowed July 10, 1941.

Statutes Involved.

The statutes conferring jurisdiction upon the municipal court over the attachments and garnishments issued in the instant case and over actions of the kind here involved are as follows:

Title 24, Section 133, D. C. Code of 1929:

“Money in hands of marshal, coroner, executor and administrator attachable.—Attachments may be levied upon money or property of the defendant in the hands of the marshal or coroner, and shall bind the same from the time of service, and shall be a legal excuse to such officer for not paying or delivering the same as he would otherwise be bound to do. *Attachments may also be levied upon money or property of the defendant in the hands of an executor or administrator, and shall bind the same from the time of service; but if the executor or administrator shall make return to the writ that he cannot certainly answer whether the defend-*

ant's share of the money or property in his hands will prove sufficient to pay the plaintiff's debt no judgment of condemnation shall be rendered as against such executor or administrator until the passage by the orphan's court of his final or other account showing money or property in his hands to which the defendant is entitled. (Mar. 3, 1901, 31 Stat. 1360, c. 854, sec. 1091; June 30, 1902, 32 Stat. 541, c. 1329.)" (Italics in Sec. 457, D. C. Code of 1924.)

Title 18, Section 193, D. C. Code of 1929:

"Jurisdiction.—The municipal court of the District of Columbia shall have *exclusive* jurisdiction in the following civil cases in which the claimed value of personal property or the debt or damages claimed exclusive of interest and costs, does not exceed \$1,000, namely, in all civil cases in which the amount claimed to be due for debt or damages arises out of contracts, express or implied or damages for wrongs or injuries to persons or property, *including all proceedings by attachment or in replevin* (except in cases involving title to real estate or actions against judges of the municipal court or other officers for official misconduct), and in actions for the recovery of damages for assault, assault and battery, slander, libel, malicious prosecution, and breach of promise to marry. (Mar. 3, 1901, 31 Stat. 1191, c. 854, sec. 9; Feb. 17, 1909, 35 Stat. 623, c. 134; Mar. 3, 1921, 41 Stat. 1310, c. 125, sec. 1.)" (Italics ours)

Title 18, Section 223, D. C. Code of 1929

"Attachment.—The provisions of this code relating to attachments shall apply to attachment proceedings in said municipal court. (Mar. 3, 1921, 41 Stat. 1312, c. 125, section 9.)"

Section 15 of the Municipal Court Act of 1921 (D. C. Code of 1924 at page 524), 41 Stat. L. pt. 1, p. 1310 (this section does not seem to appear in the 1929 Code):

"Sec. 15. That all Acts and parts of Acts inconsistent herewith are hereby repealed: * * * * *Provided further*, That nothing herein shall be construed to deprive said Municipal Court of any jurisdiction possessed by said court at the time of the passage of this Act."

The municipal court, of course, has *exclusive* jurisdiction over debt actions involving \$1,000 or less, under Title 18, Sec. 193, D. C. Code of 1929, and in such debt actions attachments before judgment may be issued on the ground of non-residence of the defendant, pursuant to Title 24, Sec. 121, D. C. Code, 1929; may be levied on credits in the hands of a third person under Sec. 128 of Title 24, and the manner of levying is specified in Sec. 132 of Title 24.

Statement of Points on Which Petitioner Intends to Rely on Appeal.

1. The provisions of Title 24, Sec. 133 D. C. Code of 1929, are applicable to the municipal court of the District of Columbia.

2. The municipal court of the District of Columbia had jurisdiction over the attachments and garnishments issued in the instant case.

3. The municipal court erred in sustaining the motions to quash on one or more of the grounds set forth therein.

Summary of Argument.

I.

Under the provisions of Title 24, Sec. 133, D. C. Code of 1929: Title 18, Sec. 193 D. C. Code of 1929: Title 18, Sec. 223, D. C. Code of 1929, and Section 15 of the Municipal Court Act of 1921 (1924 Code, at page 524), the municipal court of the District of Columbia has jurisdiction over an attachment before judgment involving a debt action of \$1,000. or less where an executor of a local estate is served as garnishee.

II.

The order of municipal court creates by construction a jurisdictional "no man's land" respecting attachments before judgment on the ground of non-residence in debt action involving \$1,000. or less where an executor is served as garnishee.

III.

None of the grounds set forth in the motions to quash the attachments is tenable, and it was error for the municipal court to sustain the motions of any of the grounds set forth therein.

IV.

Analysis of position taken by appellee, both in the municipal court and in opposition to allowance of writ of error:

(a) Immaterial that the account in bank was in name of attorney for executor rather than in executor's own name.

(b) The cases cited by appellee in municipal court and in opposition to allowance of appeal here are either not in point or are favorable to appellant.

1. Question whether garnishment in a suit is academic in view of District of Columbia attachment statutes.

2. *Dobbins v. Neubeck* is not authoritative.

3. Suggestion that attachments should be issued from district court fallacious.

V.

Conclusion.

ARGUMENT.

I.

Under the provisions of Title 24, Sec. 133, D. C. Code of 1929; Title 18, Sec. 193, D. C. Code of 1929; Title 18, Sec. 223, D. C. Code of 1929 and Sec. 15 of the Municipal Court Act of 1921 (1924 Code, at p. 524), *supra*, the municipal court of the District of Columbia has jurisdiction over an attachment before judgment involving a debt action of \$1,000. or less where an executor of a local estate is served as garnishee. Paragraphs 1 and 2 of the statement of points on which petitioner intends to rely on appeal, differently phrased, relate to the jurisdiction of the municipal court and consequently will be treated together.

Although the municipal court did not assign any reasons for its order granting the motions to quash the attachments, nevertheless the principal ground urged both in the motions and at oral argument was that the municipal court of the District of Columbia was without jurisdiction over the attachments and garnishments in the instant case and that instead the action should have been brought and the attachments issued in the District Court of the United States for the District of Columbia.

Title 24, Sec. 133 (Chapter 13, Sec. 457 of the 1924 Code) clearly and in unequivocal terms authorizes an attachment of money or property of a defendant, such as Malone in the present case, in the hands of an executor or administrator.

For convenience, the material portion (enacted in 1902) of this statute is again quoted:

“ * * * * Attachments may also be levied upon money or property of the defendant in the hands of an executor or administrator, and shall bind the same from the time of service; but if the executor or administrator shall make return to the writ that he cannot certainly answer whether the defendant's share of the money or property in his hands will prove sufficient to pay the plaintiff's debt, no judgment of condemnation shall be rendered as against such executor or administrator until the passage by the orphan's court of his final or other account showing money or property in his hands to which the defendant is entitled.”

The provisions of this statute could not be more plain. The municipal court apparently accepted the view urged by the appellee that this statute does not relate to the municipal court. The Act in terms does not exclude that court from its purview, and there is not any reason in law why it should be excluded from the direct statutory authority. But, to put the matter beyond any shadow of doubt, Congress, in Title 18, Sec. 223, D. C. Code of 1929, said:

“The provisions of the code of laws for the District of Columbia, relating to *attachments* shall apply to attachment proceedings in said municipal court.”

This section was enacted in 1921.

Moreover, in the jurisdictional act of the municipal court, also enacted in 1921 (Title 18, Sec. 193, D. C. Code of 1929), that court was given exclusive jurisdiction over certain civil cases involving the sum of \$1,000. and less, among which was the kind of suit brought by Frank against Malone, namely, one of debt, “*including all proceedings by attachment.*”

Finally, under Sec. 15 of the Municipal Court Act of 1921 (1924 Code, at p. 524—this section seems not to be included in the 1929 Code), it was provided that:

“All acts and parts of acts inconsistent herewith are hereby repealed: * * * provided further, that nothing herein shall be construed to deprive said municipal court of any jurisdiction possessed by said court at the time of the passage of this Act.”

It is, therefore, respectfully submitted that the foregoing provisions not only confer jurisdiction upon the municipal court over the attachments and garnishments in the instant case, but also constitute a plain mandate of jurisdiction over them. It is difficult to perceive how statutory authority could be made more plain or positive, and why the municipal court disregarded them.

By these sections Congress has said that the property of an individual in the hands of a local administrator or executor is subject to attachment before judgment; that such attachments may be issued from the municipal court in actions of debt involving \$1,000. or less, and that any provisions of the Code to the contrary or inconsistent therewith are repealed.

Moreover, it is apparent that the contention of appellee, Malone, made below, that the issuance of an attachment against the administrator as garnishee made him a party to the suit and in effect was equivalent to bringing a suit against him in the municipal court is irrelevant and wholly academic, because whether as a mere matter of discussion a garnishee is a party to a suit or not, the provisions of the statutes not only permit but also require the action and the kind of attachments and garnishments involved here to be brought in the municipal court.

There is no case in the District of Columbia which has construed these statutes as not giving the municipal court jurisdiction over the kind of attachments and garnishments issued in this case. It is respectfully submitted, therefore, that the order of March 3, 1941 was made in disregard and contravention of the statutes and it should be reversed.

II.

If the order of March 3, 1941 were permitted to stand, there would be created by construction a jurisdictional "no man's land" in attachment before judgment suits involving \$1,000. or less in the District of Columbia in which an executor was served as garnishee.

The argument of appellee has been that this action should have been brought in the District Court of the United States for the District of Columbia, although it involves approximately the sum of \$500. Under Title 18, Sec. 193, D. C. Code of 1929, the municipal court is given exclusive jurisdiction over the kind of action brought here, "*including all proceedings by attachment.*"

It is untenable to say that jurisdiction depends upon some incidental or remedial procedure ancillary to the main case. If this were not so, then in an action in the municipal court involving \$1,000. or less in which attachments before judgment are sought to be issued on the ground of non-residence and the garnishees therein were (1) an executor; (2) a bank; and (3) an individual in this District, under the contentions of the appellee and as adopted by the municipal court, the executor garnishee could suc-

cessfully say the suit ought to be in the district court and the other two garnishees could likewise successfully say that the suit ought to be in the municipal court. Thus, a jurisdictional "no man's land" would be created by construction in direct contravention of the statutes in cases involving \$1,000. or less. This seems absurd.

III.

None of the grounds set forth in the motions to quash the attachments is tenable and it was therefore error for the municipal court to sustain the motions on any of the grounds advanced. The grounds of the first motion (Appellant's App. 8, 9) are hereinafter quoted separately and answered:

"1. That the said writs of attachment before judgment were improvidently issued."

There is no merit in this first ground of the motion as the attachments were issued in conformity with law and are regular on their face.

"2. That said writs of attachment before judgment, as will appear, are directed against a foreign executor and against the attorney for said executor, in his representative capacity as such attorney for such executor."

The second ground of the motion is likewise without merit as these attachments were not directed against a foreign executor but against the property of an individual defendant in the hands of (1) a non-resident executor of an estate administered in the District of Columbia; (2) the attorney for such executor, and (3) a bank in this jurisdiction. It is clear from the answer of the bank to the interrogatories, (R. 13), that the executor deposited the estate

funds in the name of his attorney rather than in his own name as executor, and so the attachment directed towards the attorney in the capacity in which the estate account was held was quite appropriate.

“3. That the property sought to be attached is the property of an estate now being administered by the District Court of the United States for the District of Columbia and therefore is not lawfully subject to attachment under said writs.”

The third ground is wholly untenable as the attachment does not seek to seize the property of an estate now being administered by the district court, but on the contrary is directed against property, if any, of the individual defendant, Tennyson W. Malone, which may happen to be in the hands of an executor of a local estate. Moreover, this particular ground was akin to a “speaking demurrer” because it set up matter, as ground for motion to quash, which would have to be shown by evidence. Furthermore, appellee filed in his opposition to the allowance of writ of appeal, the final account of the executor and asked this Court to consider such account to which appellant, Frank, had no objection. From the final account of Malone, executor, now, consequently before this Court, it is apparent there is the sum of \$314.78 due to Tennyson W. Malone individually as a distributee. This is the fund which the attachments and garnishments seek to reach and so it is quite clear that the estate having been fully administered, no property thereof is being seized by Frank under his attachments.

“4. That this Court cannot lawfully issue an attachment or order a judgment of condemnation against this executor or his attorney who is acting in his representative capacity as attorney for such executor.

“5. That this Court has no jurisdiction of a suit against the estate of a decedent and these attachments are in effect suits.

The fourth and fifth grounds of the motion relate to the jurisdictional question and have already been discussed.

“6. A suit is not maintainable in this jurisdiction against a foreign executor in his representative capacity (*Ryan v. McAdoo*, 46 App. D. C. 117).

The sixth ground is untenable because, as has been said, this was not an action against a foreign executor, but on the contrary was a suit against an individual in which credits belonging to the individual defendant were sought to be attached in the hands of a non-resident executor of a local estate.

“7. And for other irregularities, defects and insufficiencies in the procurement, issue, service, and return of the said writs.”

The seventh ground of the motion is merely in effect a general demurrer. Attachments before judgment are authorized by Title 24, Sec. 121 of the D. C. Code of 1929.

IV.

Analysis of Position Taken by Appellee Both in the Municipal Court and in Opposition to Allowance of Writ of Appeal.

a. Position Taken by Appellee.

In order to obviate reply, appellant will now consider the position taken by appellee and the cases cited on his behalf, both in the municipal court and in this Court in the brief in opposition to allowance of writ of appeal.

There was some suggestion by appellee in the opposition to allowance of appeal that the executor's attorney was

acting in a representative capacity and therefore no attachment before judgment could be directed to him and he ought not even to be required to answer the interrogatories addressed to him as garnishee. If the executor chooses to place his account in the bank in the name of his attorney rather than in his own official account as executor, that is his affair, but he does not thus escape his executor's ordinary rights and obligations. Naturally, the attorney for the executor is as capable of answering an interrogatory as to whether the executor has any goods, chattels or credits in his possession belonging to appellee—the individual Malone—as the executor himself. Accordingly, it is respectfully submitted there is nothing to this suggestion of appellee.

Appellant^{ee} also referred to Title 24, Sec. 153, of the D. C. Code of 1929. That section does not relate to the question here involved and deals with attachments against bank accounts when the account is in the name of an agent or trustee and the agent or trustee does not designate the principal or beneficiary of the bank account, such as "John Jones, agent," or "John Jones, trustee." Here the beneficiary, namely, the estate of Thomas W. Malone, is plainly designated in the account of Warren E. Miller, attorney for executor of the estate of Thomas W. Malone, deceased, and it is quite clear that the account is that of the executor. Moreover, the final account of the executor has been approved and passed by the district court and in addition, pursuant to agreement of counsel, the only fund in question and held is the sum of \$314.78 due Malone individually as a distributee of the estate.

b. *The Cases Cited by Appellee.*

The first case cited by appellee was *Federal Housing Administration v. Burr*, 309 U. S. 242, 84 L. ed. 724. That case did not purport to consider the attachment statutes of

the District of Columbia but rather those of Michigan. The question presented was whether the Federal Housing Administration was subject to garnishment of moneys due an employee. It is true that the Court referred to the question of whether a garnishment may be a suit within the meaning of the principle of governmental immunity from suit, but, as we have seen, this is beside the point in the instant case. Appellee by use of this case attempted to erect a straw man and then proceeded to demolish him. He tried to pose the question presented here as being whether a garnishment is a suit. As heretofore pointed out, it is wholly immaterial and entirely academic whether a garnishment may be regarded as a suit for certain purposes. Congress has authorized an attachment before judgment to be issued from the municipal court against an executor to reach the credits of an individual in his hands and there is no reason why this may not be done.

Another case cited by the appellee is that of *Sanford v. Sanford*, 52 App. D. C. 315, 286 F. 777. There suit was brought in the municipal court directly against Laura E. Sanford, as administratrix of the estate of Claude B. Sanford, deceased, as defendant, on a *claim which the plaintiff had against the estate*. This is not the situation here. Henry Frank did not bring a suit in the municipal court against Malone as executor of the estate of Thomas W. Malone, deceased, on a claim which Frank asserted against the estate, but, on the contrary, brought an action against Malone individually on a judgment which he had obtained against him in Ohio.

That case is in support of appellant's position rather than against it. This Court, in discussing the question of jurisdiction of the municipal court over direct suits against the

executor on estate claims, considered Sec. 1091 (Title 24, Sec. 289, 1929 Code) of the 1924 Code—the after-judgment attachment counterpart to Sec. 457 (Title 24, Sec. 133, 1929 Code)—as being admittedly applicable to the municipal court, but, of course, not applicable to the case before it on the facts, as the suit was against the executor on a claim against the estate. The Court plainly held by the sentence (page 317):

“The defendant referred to is one who has a right to money in the hands of an administrator or executor of an estate which is subject to a judgment against him,” that in such instance—which is exactly the case here—the statute confers jurisdiction on the municipal court: for Malone individually has a right to the sum of \$314.78 in the hands of himself as executor, and this sum is, of course, subject to the *in rem* judgment afforded against the property of the non-resident defendant, Malone, and to that extent against such defendant.

Another case cited by appellee, and upon which it is believed the municipal court rested its order, is that of *Dobbins v. Neubeck*, 64 W. L. R. 1077. That case does not construe, purport to construe or even mention the statutes on which appellant relies here, and consequently must not be regarded as authoritative. That decision could not by indirection render nugatory the aforesaid statutes.

In the *Dobbins* case, *supra*, there was an attachment after judgment instead of before judgment and an executor was served as garnishee. The court erroneously assumed the question in the case to be whether the issuance of an attachment against an executor made him a party to the suit and was therefore, in effect, a suit against him. The question in that case should have been: what are the relevant code sections, and do they authorize such attachments? The court either ignored the pertinent attachment stat-

utes or probably its attention was not called to them, and in either event its opinion would not be authoritative. It is apparent the case was simply contested either upon academic or misconceived grounds.

This is made clear by the statement in the opinion that the creditor's remedy was very simple, namely, to obtain judgment, docket it in the district court and have the attachment issued there. Incidentally, the appellee made the same contention in the municipal court, and did so here. Appellee even went so far on page 6 of his brief in opposition to allowance of appeal to suggest on the authority of the case of *Colliflower & Company v. McCullum-Sauber Company*, 61 App. D. C. 390, 63 F. 2d 366, that the appellant should have obtained judgment in the municipal court before issuing the attachments and garnishments. Both have failed to envisage the kind of case brought by Henry Frank and the appropriate procedure laid down by the Code. There never could be a personal judgment rendered in the Frank case or in any case against a non-resident defendant unless he voluntarily appeared in the suit, as the jurisdiction is *in rem* and depends upon finding property of the defendant within the jurisdiction of the court. The only judgment which could be rendered is one to the extent of the amount of the property so found, which may be done if the defendant does not voluntarily appear, only after publication pursuant to the provisions of Title 24, Sec. 122 of D. C. Code of 1929. The remedy spoken of in *Dobbins v. Neubeck*, *supra*, and by appellee, therefore, would not only not be simple but also impossible.

Sec. 13

Furthermore, it is untenable to say that jurisdiction depends upon some incidental or remedial procedure ancillary to the main case in which one is made a party for certain purposes and is not directly sued as a co-defendant. Juris-

diction arises from the original suit, not from some subordinate phases of the case. If this were not so, then in a suit in the municipal court, as was said heretofore, involving the sum of \$1,000. or less, in which attachments before judgments were issued on the ground of non-residence of the defendant and the garnishees therein were (1) an executor; (2) a bank; and (3) an ordinary individual in the District, under the reasoning employed in the *Dobbins* case, the executor garnishee could successfully say the suit ought to be in the district court, and the other two garnishees could likewise successfully say the suit ought to be in the municipal court. In such cases a jurisdictional hiatus would be created by construction in direct contravention of the statutory scheme for attachments in this District.

Although enough has been shown, it is respectfully submitted to disregard the *Dobbins* case, *supra*, merely as a matter of discussion, and in view of the citation of Title 29, Sec. 251 of the 1929 Code by the appellee on page 3 of his brief in opposition to allowance of appeal, it may be said that statute and those referred to in the *Dobbins* case concern administration of the probate law and are thus not relevant here. This is because a claim against an estate in the District of Columbia is first probated against the estate. If it is allowed by the executor, nothing further need be done by the claimant who will receive payment in full if the estate is solvent, otherwise distribution will be prorated. If, however, the claim is rejected by the executor, suit must be filed on such claim in the district court. The Code sections mentioned in the *Dobbins* case, and the one cited on page 3 of appellee's brief in opposition to allowance of appeal (Title 29, Sec. 251, 1929 Code) relate to this kind of suit and provide that the judgment may be limited in order to prevent an undue preference in the distribution of the assets of the estate as against other dis-

tributees where the estate is insolvent, and thus ensure equality of distribution. Such suit is expressly confined to the district court under Title 29, Sections 251 and 252.

Contrast the above sections with Title 24, Sec. 133, *supra* (authorizing attachments against executors). Title 24, Sec. 133 ^{1, 4, 3} makes full provision and gives full protection to the executor whether the attachment is in the district court or in the municipal court. If the estate has not been settled and the executor does not know whether, on final distribution, the individual defendant whose funds are being garnisheed in the attachment suit, will have any money coming to him, the executor may so answer; in which event, judgment of condemnation is postponed until the final account reveals the precise amount of the defendant's property in the hands of the executor. Needless to say, when the final account is so filed, whether the estate is insolvent or not, the creditors, distributees or legatees thereof will have their definite proportions fixed and under any circumstances, no assets of the estate are affected because the attachment merely seizes the funds belonging to some individual defendant already definitely determined, which merely happen to be in the hands of the executor.

In this case, therefore, if Malone as executor, did not know whether he would have any funds in his hands at the time the attachments were issued distributable to the appellee, he could say so in his answer to the interrogatories, and the judgment of condemnation would have been postponed until he filed his final account. Naturally, this answer can be made in the municipal court as well as in the district court. When the executor filed his final account, it would reveal that he had the sum of \$314.78 in his hands belonging to the appellee and he could then so state.

Thus no assets of the estate are seized merely by serving a garnishment on the executor. If this were not so then there would be no authority even in the district court to

issue such attachment or garnishment, as the probate law governs the collection and distribution of assets of a decedent's estate, and consequently Title 24, Sec. 133 would be entirely without force. The suggestion that the attachments should have issued from the district court is consequently fallacious.

Finally, appellee referred to the rather obscure case of *In re: Neuland*, deceased, 44 W. L. R. 378. The decision inferred that the municipal court was not a court within the meaning of Sec. 356 (Title 29, Sec. 210, 1929 Code) because it had no seal and was not a court of record. This decision was rendered prior to the 1921 Municipal Court Act, making the court one of record and giving it a seal. The *Neuland* case did not involve attachments or the sections of the Code relied on by appellee.

V.

Conclusion.

It is respectfully submitted, therefore, that the municipal court erroneously made its order complained of; that plain sections of the attachment law of the District of Columbia have been rendered nugatory by construction; that the municipal court clearly had jurisdiction over the attachments issued, and that creditors of the class in the instant case are made remediless as to attachments and garnishments of assets of an individual in the hands of an executor under the aforesaid order, and that the judgment of the municipal court should be reversed.

Respectfully submitted,

WOODSON P. HOUGHTON,
KAHL K. SPRIGGS,
Attorneys for Appellant,
Southern Building,
Washington, D. C.

APPENDIX.

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Filed October 24, 1940

2

IN THE
MUNICIPAL COURT OF THE DISTRICT OF
COLUMBIA.

HENRY FRANK, 542 Mithoff Street, Co-
lumbus, Ohio,

Plaintiff,

vs.

TENNYSON MALONE, also known as TENNY-
SON W. MALONE, 765 Taylor Avenue,
Columbus, Ohio,

Defendant.

No. 394467.

**Affidavit of Merit and in Support of Attachment
Before Judgment.**

State of Ohio, }
County of Franklin. } ss.:

HENRY FRANK, being first duly sworn deposes and says that he is the plaintiff herein and as such has a just cause of action against the defendant, Tennyson Malone which is as follows. That heretofore on, to-wit, the 5th day of February, 1940, plaintiff recovered a judgment in the Common Pleas Court of Franklin County, State of Ohio, which is a Court of Record and general jurisdiction in said State, against the defendant, Tennyson Malone, in the sum of Four Hundred Ninety and ten hundredth Dollars (\$490.10) with interest at six percent (6%) from date of said indg-

ment, in an action pending in said Court, at a duly constituted and lawful term thereof, wherein said Henry Frank was the plaintiff, and the defendant herein Tennyson Malone, was defendant, the said action being Case No. 158907: that the said judgment remains in full force and effect, unsatisfied in whole or in part, unappealed from unreversed and not superseded. Affiant further says that the said

3 Tennyson Malone is also known as Tennyson W. Malone. Affiant says that the said defendant Tennyson Malone is a non-resident of the District of Columbia. And the plaintiff is justly entitled to recover of and from the said defendant, according to the particulars of demand hereto annexed and made a part hereof, exclusive of all set-offs and just grounds of defense, the sum of \$490.10, together with interest at the rate of six percent per annum from February 5, 1940, besides costs of this suit.

HENRY FRANK.

Subscribed and sworn to before me this 23d day of August, 1940.

CHARLES H. FRANK,
Notary Public.

My commission expires Jan. 25, 1942.

(SEAL)

* * * * *

9 **Bond in Attachment Before Judgment.**IN THE MUNICIPAL COURT OF THE DISTRICT
OF COLUMBIA

HENRY FRANK,

Plaintiff,

vs.

TENNYSON MALONE, also known as TENNY-
SON W. MALONE,*Defendant.*

District of Columbia, to-wit:

Know all men by these presents, That we Henry Frank as principal and American Surety Company of New York, a corporation organized and existing under the laws of the State of N. Y., with principal office at 100 Broadway, N. Y. as surety, are held and firmly bound unto the above named defendant, in the full sum of one thousand and twenty-five dollars to be paid to the said defendant Tennyson Malone, also known as Tennyson W. Malone his executors, administrators, successors, or assigns. To which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, administrators, successors, and assigns, firmly by these presents.

Sealed with our seals, and dated this 27th day of August,
A. D. 1940.

WHEREAS, the above named plaintiff Henry Frank has sued out a Writ of Attachment against the goods, chattels and credits of the said defendant found in the District of Columbia.

NOW, THEREFORE, the condition of this obligation is such, That if the above-named obligors shall make good to the said defendant all costs and damages which he may sustain by reason of the wrongful suing out of said Attachment, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

(Signed) HENRY FRANK, (SEAL)
 AMERICAN SURETY CO. OF N. Y. (SEAL)
 By Paul N. Cherry, *Resident Vice President.*

Attest:

A. P. Wiley, *Resident Asst. Sec'y.*

Sealed and delivered in presence of:

Clay Adler (signed)

Daniel S. Webber, Jr. (signed)

Approved Octo. 24, 1940.

Signed Blanche Neff, *Clerk.*

10 **Writ of Attachment Before Judgment.**

IN THE MUNICIPAL COURT OF THE
 DISTRICT OF COLUMBIA.

(Caption Omitted.)

*The President of the United States, to the Marshal of said
 District—Greetings:*

YOU ARE HEREBY COMMANDED to attach, seize, take into your custody the defendant's goods, chattels, and credits which shall be found in this District, to the value of four hundred ninety and 10/100 Dollars (\$490.10), with interest from the 5th day of February, 1940, being the

amount of the plaintiff's claim against the defendant as shown by his affidavit, duly filed in this cause; and the further sum of \$....., for the costs and charges which may accrue in the premises; and the same so attached safely keep, subject to the orders of the Court, unless the defendant or the person in whose possession the property is attached, deliver to you to be filed herein, his undertaking, to be approved by the Court, with sufficient surety or sureties, to abide by and perform the judgment of the Court in relation to said property.

And you shall serve a notice on the defendant, if he be found in the District, and on any person in whose possession any property or credits of the defendant may be attached, to appear in said Court on or before the twentieth day, exclusive of Sundays and legal holidays, after service of such notice, and show cause, if any there be, why the property or credits so attached should not be condemned, and execution thereof had; said notice to be served on the defendant by delivering to him a copy of this writ; and return this writ so indorsed as to show how and when you have executed it.

WITNESS the Honorable GEORGE C. AUKAM, Presiding Judge of said Court this 24th day of October, A. D. 1940.

BLANCHE NEFF,
Clerk.

By
Assistant Clerk.

Let this writ issue.

Blanche Neff,
Clerk.

Interrogatories to be Answered by the Garnishee.

1. Were you, at the time of the service of the annexed writ of attachment, or have you been, between the time of such service and the filing of your answer to this interrogatory, indebted to the defendant? If so, how, and in what amount?

Answer:

2. Had you, at the time of the service of the annexed writ of attachment, or have you had, between the time of such service and the filing of your answer to this interrogatory, any goods, chattels, or credits of the defendant in your possession or charge? If so, what?

Answer:

.....
Garnishee.

Subscribed and sworn to before me this.....day of
, A. D. 194.....

.....(SEAL)

Notice to Garnishee.

October 24, 1940

To Tennyson W. Malone, executor of the estate of Thomas W. Malone, deceased, and Warren E. Miller, attorney for Tennyson W. Malone, executor of the estate of Thomas W. Malone, deceased, Garnishees:

YOU ARE HEREBY NOTIFIED that any property or credits of the defendant in your possession or charge, or any indebtedness of yours to the defendant at the time of the service of the annexed writ of attachment or between the time of such service and the filing of your answer to the foregoing interrogatories, are seized by virtue of the said writ of attachment, and you are also notified to appear in said Court on or before the twentieth day, exclusive of Sundays and legal holidays, after the service of this notice, and show cause, if any there be, why the property and credits so attached should not be condemned and execution thereof had.

.....
U. S. Marshal.

By
Deputy.

To Tennyson W. Malone, executor of the estate of Thomas W. Malone, deceased; Warren E. Miller, attorney for Tennyson W. Malone, executor of the estate of Thomas W. Malone, deceased, Garnishees:

You are required to answer the foregoing interrogatories, under oath, within ten days after service hereof. And

should you neglect or refuse so to do, judgment may be entered against you for an amount sufficient to pay the plaintiff's claim with interest and costs of suit.

KAHL K. SPRIGGS,
Attorney for Plaintiff.

Motion to Quash Attachment.

15 IN THE MUNICIPAL COURT OF THE
DISTRICT OF COLUMBIA.

HENRY FRANK,

Plaintiff,

vs.

TENNYSON MALONE, also known as TENNY-
SON W. MALONE,

Defendant.

No. 394 467

Now comes Tennyson Malone, also known as Tennyson W. Malone by counsel and appears specially for the purpose of this motion and for objecting to the jurisdiction of the court and not appearing generally or for any other purpose, and moves the court to quash the writs of Attachment Before Judgment herein issued on October 24, 1940 against the said Tennyson Malone, Executor of the Estate of Thomas W. Malone, deceased, addressed to him in care of the Register of Wills for the District of Columbia and against Warren E. Miller, Attorney for Tennyson W. Malone, Executor of the estate of Thomas W. Malone, deceased and moves this Honorable Court to vacate and set aside the said writs of attachment and the levy of said writs

and to discharge the property covered thereby, and for grounds hereof assigns the following:

1. That the said writs of attachment before judgment were improvidently issued.

2. That said Writs of Attachment Before Judgment, as will appear, are directed against a foreign executor and against the attorney for said executor, in his representative capacity as such attorney for such executor.

3. That the property sought to be attached is the property of an estate now being administered by the District Court of the U. S. for the District of Columbia and therefore is not lawfully subject to attachment under said writs.

16 4. That this court cannot lawfully issue an attachment or order a judgment of condemnation against this executor or his attorney who is acting in his representative capacity as attorney for such executor.

5. That this court has no jurisdiction of a suit against the estate of a decedent and these attachments are in effect suits.

6. A suit is not maintainable in this jurisdiction against a foreign executor in his representative capacity. (Ryan vs. McAdoo, 46 App. D. C. 117.)

7. And for other irregularities, defects and insufficiencies in the procurement, issue, service and return of the said writs.

(Signed) WARREN E. MILLER,
Attorney for Defendant.

Service of the foregoing motion is accepted and acknowledged this 19th day of November, 1940.

KAHL K. SPRIGGS
Attorney for Plaintiff.

Order Quashing Attachments Before Judgment.

20 IN THE MUNICIPAL COURT OF THE
 DISTRICT OF COLUMBIA.

HENRY FRANK,

Plaintiff,

vs.

TENNYSON MALONE, also known as TENNY-
SON W. MALONE,

Defendant.

No. 394,467.

Upon consideration of the motion to quash attachments before judgment issued herein on October 24, 1940 against Tennyson W. Malone, executor of the estate of Thomas W. Malone, deceased, and Warren E. Miller, attorney for Tennyson W. Malone, executor of the estate of Thomas W. Malone, deceased, garnishees, and the motion to quash attachment before judgment issued herein on December 3, 1940 against Security Savings and Commercial Bank of Washington, D. C., garnishee, it is by the Court this 4th day of March, 1941,

ORDERED, That the motions be, and they hereby are, granted, and that the said attachments before judgment be, and they hereby are, quashed and set aside.

(Signed) ARMOND W. SCOTT,
Judge

Approved as to form:

(Signed) KAHL K. SPRIGGS,
Attorney for Plaintiff.

(Signed) WARREN E. MILLER,
Attorney for Defendant.

Exception noted by plaintiff to foregoing order.

KAHL K. SPRIGGS,
Attorney for Plaintiff.

BRIEF FOR APPELLEE.

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA**

OCTOBER TERM, 1941.

UNITED STATES
COURT OF APPEALS FOR
DISTRICT OF COLUMBIA

No. 7850.

FILED DEC 26 1941

Joseph W. Starnes

HENRY FRANK, APPELLANT,

VS.

TENNYSON MALONE, ALSO KNOWN AS TENNY-
SON W. MALONE, APPELLEE.

APPEAL ALLOWED FROM ORDER OF THE MUNICIPAL COURT OF THE
DISTRICT OF COLUMBIA DISMISSING ATTACHMENTS
BEFORE JUDGMENT.

WARREN E. MILLER,
Peoples Life Insurance Building,
Washington, D. C.,
Attorney for Appellee.

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**IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA**

OCTOBER TERM, 1941.

No. 7850.

HENRY FRANK, APPELLANT,
VS.

TENNYSON MALONE, ALSO KNOWN AS TENNY-
SON W. MALONE, APPELLEE.

APPEAL ALLOWED FROM ORDER OF THE MUNICIPAL COURT OF THE
DISTRICT OF COLUMBIA DISMISSING ATTACHMENTS
BEFORE JUDGMENT.

BRIEF FOR APPELLEE.

COUNTER-STATEMENT OF THE CASE.

Appellant recovered judgment on a promissory note against this appellee personally on February 5, 1940, in the Common Pleas Court of Franklin County, Ohio, in the amount of \$490.10 (Appellant's App. 1) with interest. Thereafter, he filed suit in the Municipal Court of the District Court against appellee upon the foreign judg-

ment obtained in Ohio, and then, without reducing the suit in this jurisdiction to judgment appellant caused three writs of attachment to be issued, directed as follows:

- (1) "Tennyson W. Malone, Executor of the Estate of Thomas W. Malone, Deceased."
- (2) "Warren E. Miller, attorney for Tennyson W. Malone, Executor of the Estate of Thomas W. Malone, Deceased."
- (3) "The Security Savings and Commercial Bank."

To the attachment against the Security Savings and Commercial Bank, a motion to quash was filed upon the following grounds:

1. That the said writ of attachment before judgment was improvidently issued.

2. That the property sought to be attached is the property of an estate now being administered by the District Court of the United States for the District of Columbia and therefore is not lawfully subject to attachment under said writ.

3. That this court cannot lawfully issue an attachment against funds held by an agent or trustee or one in a representative capacity without the designation of the principal set forth in the trust account and without the designation of the beneficiary mentioned therein.

4. That this court has no jurisdiction of a suit against an executor of a decedent whose case is being administered by the Probate Branch of the District Court of the United States for the District of Columbia, and this attachment is in effect a suit.

5. And for other irregularities, defects and insufficiencies in the procurement, issue, service and return of the said writ.

A motion was filed to quash the first two above enumerated writs of attachment before judgment, one of which was addressed to Thomas W. Malone in care of the Register of Wills (Appellant's App. . .) and the other addressed to Warren E. Miller, attorney for Tennyson W. Malone, Executor of the estate of Thomas W. Malone, deceased. (Appellant's App. 8-9.)

The court below entered an order quashing these attachments before judgment. (Appellant's App. 9-11.)

STATUTES INVOLVED.

Title 24, Paragraph 153 of the District of Columbia Code provides:

“Whenever a writ of attachment shall be served on any * * * person as garnishee, and such garnishee holds a credit or property for two or more persons, including the person whose credit or property is sought to be attached, *or holds a credit or property for any person as agent or trustee or in any other representative capacity without designation of the principal or beneficiary*, such credit or property shall not be subject to withdrawal by any person, but shall be held by the garnishee until the attachment shall have been dismissed or otherwise disposed of by the court * * *.” (Italics supplied.)

Title 29, Section 251 of the District of Columbia Code provides:

“Chapter 10. Suits by and against Executors. etc.—Executors and administrators shall have full power and authority to commence and prosecute any personal action of law or in equity which the tes-

tator or intestate might have commenced and prosecuted, except actions for injuries to the person or to the reputation; and they shall also be liable to be sued in the supreme court of said District in any action at law or in equity, except as aforesaid, which might have been maintained against the deceased;" (Italics supplied.)

SUMMARY OF ARGUMENT.

The action of the Municipal Court in quashing both these writs of attachment was correct, because:

1. *The funds here involved were held in trust, being "earmarked" in that there was a designation that the garnishee, Warren E. Miller, was holding the property for his client, an executor duly appointed and acting by virtue of an appointment by the District Court of the United States for the District of Columbia as agent or trustee in a representative capacity with the designation of the principal or beneficiary, and therefore not subject to attachment under the provisions of Title 24, Paragraph 153 of the District of Columbia Code.*

2. *The Municipal Court has no jurisdiction over a suit against the executor of a decedent's estate while it is being administered by the Probate Branch of the District Court of the United States for the District of Columbia, jurisdiction of such suits being vested exclusively in the Probate Court of the District of Columbia.*

3. *The ruling of the lower court in this case was in accordance with the established rulings of that court which have been followed for a number of years, which correctly apply the law as previously established by this court.*

ARGUMENT.

1. The funds here involved were held in trust, being "earmarked" in that there was a designation that the garnishee, Warren E. Miller, was holding the property for his client, an executor duly appointed and acting by virtue of an appointment by the District Court of the United States for the District of Columbia as agent or trustee, in a representative capacity with the designation of the principal or beneficiary, and therefore are not subject to attachment under the provisions of Title 24, Paragraph 153 of the District of Columbia Code.

The writ which was served on "Warren E. Miller, attorney for Tennyson W. Malone, executor of the estate of Thomas W. Malone, deceased," was obviously directed against property held as agent or trustee or in a representative capacity. Equally obvious was the fact that there was a designation of the principal. He was "Tennyson W. Malone, executor." Therefore, under Title 24, Paragraph 153 of the District of Columbia Code quoted herein under "Statutes Involved," the lower court was correct in dismissing attachment as to garnishee Warren E. Miller.

As a practical matter it is questionable whether an attorney would be justified in, or required to, in the exercise of the privilege which exists between himself and his client, to answer the interrogatories of the character propounded herein.

2. The Municipal Court has no jurisdiction over a suit against the executor of a decedent's estate while it is being administered by the Probate Branch of the District Court of the United States for the District of Columbia, jurisdiction of such suits being vested exclusively in the Probate Court of the District of Columbia.

By virtue of the provisions of Title 29, Section 251, Chapter 10 of the District of Columbia Code, quoted herein under "Statutes Involved" executors, duly appointed and acting by virtue of their appointment from the Probate Court of the District of Columbia can only be sued in the Supreme Court, now the District Court of the United States for the District of Columbia.

A garnishment is a "suit." *Federal Housing Administration v. Burr*, decided by the United States Supreme Court February 12, 1940, and reported in 84 L. Ed. 424; *Dobbins v. Neubeck, Executor*, 64 W.L.R. 1077, 1078. The salaries of government employees cannot be attached because the United States has not given its consent in this manner. Applying that reasoning here it is apparent that the Municipal Court has no jurisdiction over a suit against an executor.

An executor or administrator cannot be sued in the Municipal Court in the District of Columbia (*Sanford v. Sanford*, 52 Appeals D.C. 315). Furthermore, from a practical viewpoint, attention is invited to the fact that there was no judgment here obtained against the respondent, who was the principal defendant in the court below. A judgment against the principal defendant in an attachment case is a pre-requisite to and essential for there to be a valid judgment against the garnishee (*Colliflower & Company v. McCullum-Sauber Company*, 61 App. D.C. 390, 63 Fed. (2d) 366).

So far as the jurisdiction of the Municipal Court is concerned, it matters not whether the suit is against the executor or against someone who has been determined to be entitled to a share of the estate. Both are suits against an executor and therefore do not lie in the Municipal Court.

In addition, here it is clear from the copy of the account filed in the Probate Court (copy of which is asked to be included as a part of the record in this case) that at the time of the attachment there had not then been determined by the Probate Court that there was any money due to Tennyson W. Malone from the estate for which he was executor. So this executor could not, at the time the attachment was issued, show that he was indebted to himself individually, in the absence of such determination by the Probate Court.

3. The ruling of the lower court in this case was in accordance with the established rulings of that court which have been followed for a number of years, which correctly apply the law as previously established by this court.

The decision of the court below in the instant case follows the reported decision in an identical case, *Nathan A. Dobbins v. Francis L. Neubeck, Executor*, No. 326,299, reported in 64 Washington Law Reporter, 1077-1078. The decision in that case, which is short, is here repeated for the convenience of the court:

“Municipal Court: Jurisdiction: Judgments: Execution: Executors and Administrators.

In *Nathan A. Dobbins v. Francis L. Neubeck, Executor, etc., Garnishee*, at Law No. 326,299 in the Municipal Court of the District of Columbia, the plaintiff recovered a judgment against the defendant

and sought to execute thereon by attaching credits in the hands of an executor as garnishee. The garnishee filed his return denying that he had any property or credits of the judgment debtor and the plaintiff traversed the return.

"The case was heard by Judge Cayton, on the issues raised by the traverse, and on October 10, 1936, he filed the following memorandum finding for the garnishee:

"The record discloses that the plaintiff recovered a judgment against the defendant on June 11, 1936, and on said judgment caused to be issued a writ of attachment directed to Francis L. Neubeck for himself and others as executors and trustees of the estate of Raleigh Sherman, deceased. In the writ, there was exhibited to the garnishee three certain interrogatories touching on his indebtedness to the defendant and also regarding any credits in his possession belonging to the defendant. Said writ was issued on June 29th of the present year and on July 9th the garnishee answered all questions, 'No.' Thereafter, on August 13, 1936, the plaintiff filed his traverse to the answer of said garnishee and the issue created by said traverse is, in accordance with Code, Sec. 1095, now before the court for decision.

"The contention made by the garnishee is that this court is without jurisdiction to issue an attachment or order a judgment of condemnation against an executor or executors appointed by authority of the District Court of this jurisdiction. The contention is also made that the evidence discloses no indebtedness on the part of the garnishee to the defendant. It is not deemed necessary to consider this second contention in view of the jurisdictional question presented by the first defense of the garnishee. *Sections 327 and 328 of our Code do not in any manner directly or inferentially vest this court with jurisdiction to entertain any suit or claim against an*

executor or administrator. Section 327 provides in part, ‘. . . and they shall also be liable to be sued in the Supreme Court of said District in any action at law or in equity, . . .’ From the earliest days in this jurisdiction it has been held that executors and administrators could only be sued in the Supreme Court of the District and that no jurisdiction vested in a justice of the peace to entertain such a suit. (*Ritchie v. Stone*, 2 Cr. C.C. 258; *Adams v. Kincaid*, 2 Cr. C.C. 422; *Fou v. Talburt*, 5 Cr. C.C. 124; *Newmeyer v. Cowling*, 6 Mackey 304.)

“Nor has it ever been held, so far as I am aware, that the Municipal Court, which superseded the justice of the peace court, had any authority to enter judgment against an executor or administrator. The contrary was decided more than twenty years ago by Justice McCoy in the case of *In re Neuland*, 44 Wash. Law Rep. 378.

“The latest decision on this question is embodied in *Sanford v. Sanford*, 52 App. D. C. 315, 51 Wash. Law Rep. 202. There the Court of Appeals, dealing with the question of the jurisdiction of this court with its enlarged jurisdiction (41 Stat. L. 1310, Sec. 1), pointed out that Section 1 of the Act just cited, and Sections 327 and 328 of the Code are in *pari materia* and as such, must be construed together; that Section 1 is general in its terms and the others are special; that one deals with claims generally involving a thousand dollars or less, while the others deal with claims against the estates of decedents; and reached the conclusion ‘that jurisdiction of claims such as the one here involved is vested exclusively in the Supreme Court of the District and that the Municipal Court has no jurisdiction over them.’

“The plaintiff, however, is contending that the writ of attachment, and garnishment, does not constitute an ‘action’ against the executors in this case. I cannot agree with that view. I believe the law is

well settled that the service of a writ of garnishment makes the garnishee a party to the case and he then stands as any other litigant in the court with all of the rights and liabilities of a party. (*Bernheim v. Brogen*, 66 Miss. 184; *Crocker v. Baker*, 18 Pick. 407.) In other words, it is my opinion that since we have no jurisdiction against an executor or administrator who is brought in as an original party defendant, we can acquire none over the estate of a decedent by permitting the representative of such an estate to be made a party against his will by attachment or garnishment.

"In his brief, the plaintiff complains that to adopt such a view would be to defeat his rights and the possibility of a recovery on his judgment. I believe this fear is a needless one. The remedy of a plaintiff in a case of this kind is simple. In the case of *Brown v. Fersinger*, 43 Wash. Law Rep. 56, the Supreme Court of the District decided that 'When a judgment of the Municipal Court is docketed in the office of the clerk of the Supreme Court the force and effect of the judgment for all purposes is the same as one of the latter's own, and the Supreme Court has power to amend the judgment in the same way in which it would amend one of its own judgments, and clerical errors can be corrected at any time, the court being the sole judge of the necessity.' The plaintiff should docket his judgment in the District Court and it will thereupon become a judgment of that court for all purposes. (See Code, Section 29.) Thenceforth, his remedy will be simple, as his judgment will be and become a judgment of the very court having jurisdiction over the distribution of estates of decedents.

"Therefore, upon the sole ground that this court is without jurisdiction, I am ordering a finding for the garnishee on the issue created by the plaintiff's traverse. Such finding will be entered in our minutes as of October 16, 1936." (Italics supplied.)

It has been the recognized law of this jurisdiction, at least since April, 1916, when Mr. Justice McCoy, in the estate of Andrew Neuland, Administration No. 21151, held the Municipal Court of the District of Columbia had no authority against an executor or administrator. (*In re Neuland*, 44 W.L.R. 378.)

This rule was recognized by this court in *Sanford v. Sanford*, 52 App. D.C. 315, W.L.R. 202, and by Judge Cayton of the Municipal Court in an opinion filed in the case of *Nathan A. Dobbins v. Francis L. Neubeck, Administrator*, garnishee in case No. 326299 (Reported in 64 W.L.R. 1077) which is copied verbatim under the preceding argument.

Although there is no case in the District of Columbia where any court has held that the Municipal Court has jurisdiction over the kind of attachments and garnishments issued in this case, yet appellant asks this court to change the procedure which has been in effect these many years, and so decide. It is significant, too, that no reported case has been cited by petitioner in his brief in support of the construction he asks this court to place upon the statutes.

None of the statutes cited by appellant enlarges the jurisdiction of the Municipal Court so as to confer upon it jurisdiction over estates of decedents in the District of Columbia, either directly or by implication. Nor does appellant, under any settled rule of statutory construction, point out how the statute upon which he relies enlarges the jurisdiction of the Municipal Court to permit an attachment suit when that court cannot have jurisdiction over any other kind of suit against an executor serving under an appointment issued out of the Probate Court of the District of Columbia.

An executor is an officer of the court which appointed him. For him to be subjected to suit would result in the officer of the Probate Court being subjected to interference by a court of inferior jurisdiction. Such was not the intent of Congress.

There is no argument here about petitioner having a right to sue this respondent in his individual capacity in the Municipal Court, but clearly he cannot sue him as executor, which office he holds by virtue of his appointment in the Probate Court. The Municipal Court never did have jurisdiction over the officers appointed by the Probate Court. (*Sanford v. Sanford*, 62 App. D.C. 315.)

Finally, even if appellant's view should be looked upon with favor by this court, under the facts in this particular case, there having been no determination by the Probate Court at the time the attachments in question were levied that there was any money due this respondent in his individual capacity, the action of the court below in quashing the attachments was correct and the action of the court below should be sustained upon this ground.

Conclusion.

For the reasons apparent of record here, and as stated herein, it is respectfully submitted that the action of the court below was correct and that the judgment of the lower court should be affirmed.

Respectfully submitted,

WARREN E. MILLER,
Attorney for Appellee.

